



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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December 18, 2018

VIA ECF

The Honorable Lorna G. Schofield
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: SEC v. Genovese, et al., No. 17 Civ. 5821 (LGS)

Dear Judge Schofield:

Pursuant to the Court's December 11, 2018 Amended Civil Case Management Plan, Plaintiff Securities and Exchange Commission (the "Commission") respectfully submits this joint letter – with input from counsel for Defendants Robert Genovese ("Genovese") and B.G. Capital Group Ltd. (collectively, "Genovese Defendants"), and Abraham Mirman ("Mirman") (all Defendants collectively, "Defendants") – regarding the depositions that the parties anticipate taking in this case. The following list of anticipated deponents is subject to change based on the parties' discovery needs.

Plaintiff Commission anticipates deposing the following individuals: Defendant Genovese, Defendant Mirman, John Pulos, John Ward, Robert Bursky, Richard Nummi, Michael Egan, Joseph Castellano, and at least two former John Thomas Financial brokers (the Commission is still considering the particular brokers it intends to depose).¹

Defendant Mirman also anticipates deposing Genovese, Joseph Castellano, Robert Bursky, Richard Nummi, and Michael Egan. In addition, Mirman anticipates deposing Daniel Guilfoile, William Tafuri, Scott Levine, Arthur "Mel" Coffey, Wade Pappas, Russ Steward, Tommy Belesis, and Geoffrey Browne.

The Genovese Defendants' initial list of witnesses also includes Geoffrey Browne, Tommy Belesis, John Pulos, Daniel Guilfoile, William Tafuri, and Defendant Mirman. In addition, the Genovese Defendants' list includes: Manish Kshatriya, H. Richard Klatt, John Barrington, George Kent, Tim Unwin, Tom Hodgson, David Bond, James West, Marco Markin,

¹ The Commission's anticipated depositions of Mr. Bursky and Mr. Nummi remain subject to the John Thomas Financial attorney-client privilege issue raised in the Commission's recent motion to compel and addressed at the Court's December 11, 2018 status conference. (Transcript of December 11, 2018 Conference at 3-5.)

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Charles Pearlman, Jay Pennington, Dan Gelfand, Alan Trujillo, and a deposition of a Commission employee pursuant to Fed. R. Civ. P. 30(b)(6).

During the parties' meet and confer discussion yesterday, the Commission noted its objection to the number of deponents the Genovese Defendants list, as at least some appear to the Commission to be unnecessarily duplicative, since nine of their proposed deponents were officers or directors of Liberty Silver. Because the Genovese Defendants have stated that their list of deponents is subject to potential reduction (as well as expansion), the Commission will attempt to resolve this issue with the Genovese Defendants as discovery proceeds. The Commission also noted its objection to the planned 30(b)(6) deposition of a Commission witness and requested that the Genovese Defendants identify the topics of the proposed deposition.

In response to the Commission's objections, the Genovese Defendants state that its list of deponents is entirely appropriate given the longevity of the SEC's investigation and the volume of documents it received from various sources. During the course of the Commission's five (5) year investigation, it utilized its subpoena power to obtain testimony from 13 witnesses (not subject to cross examination) and documents from 74 individuals or entities. The Commission produced over 500,000 documents. And, the Commission's Complaint seeks damages of over \$17.0 million from the Genovese Defendants. In addition, the Commission's initial disclosures identify over 100 witnesses. In further response, the Genovese Defendants are under no obligation to preview the topics that it seeks discovery from the Commission until it issues a subpoena. The Commission's objection is entirely premature.

The parties also noted yesterday the significant overlap between the Commission's, Mirman's, and the Genovese Defendants' deponent lists, and the parties discussed whether combined questioning of such deponents (or any other deponents) might exceed the seven-hour limit imposed by Fed. R. Civ. P. 30(d)(1), or exceed the limit on the number of depositions imposed by Fed. R. Civ. P. 30(a)(2)(A) (i) should the non-noticing party need to re-notice a witness for further questioning. The parties will work together to attempt to resolve any issues concerning deposition number and length and will bring any unresolved disputes to the Court's attention as early as practicable.

Respectfully submitted,

/s/

Jack Kaufman

Senior Trial Counsel

cc: All Defendants, via ECF.